

— October 14, 2004 —



Financial Management

DoD Antideficiency Act Reporting and Disciplinary Process (D-2005-003)

— Department of Defense —
Office of the Inspector General

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Acronyms

| | |
|------|--------------------------------------|
| ADA | Antideficiency Act |
| ASN | Assistant Secretary of the Navy |
| FM&C | Financial Management and Comptroller |
| FMR | Financial Management Regulation |
| OSD | Office of the Secretary of Defense |



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-4704

October 14, 2004

MEMORANDUM FOR UNDER SECRETARY DEFENSE (COMPTROLLER)/CHIEF FINANCIAL OFFICER
DEPUTY GENERAL COUNSEL (FISCAL)
ASSISTANT SECRETARY OF THE ARMY (FINANCIAL MANAGEMENT AND COMPTROLLER)
ASSISTANT SECRETARY OF THE NAVY (FINANCIAL MANAGEMENT AND COMPTROLLER)
ASSISTANT SECRETARY OF THE AIR FORCE (FINANCIAL MANAGEMENT AND COMPTROLLER)
DEPUTY PRINCIPAL GENERAL COUNSEL OF THE AIR FORCE

SUBJECT: Report on DoD Antideficiency Act Reporting and Disciplinary Process
(Report No. D-2005-003)

We are providing this report for review and comment. We considered comments from the Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer, the Department of the Army, the Department of the Navy, and the Department of the Air Force when preparing the final report.

DoD Directive 7650.3 requires that all recommendations be resolved promptly. The Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer comments were partially responsive. We request additional comments on Recommendations A.1 and B.1c. The Assistant Secretary of the Navy for Financial Management comments were not responsive. We request additional comments on Recommendation A.3. As a result of management comments, we revised Recommendation B.2, which is directed to the Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer, and we redirected Recommendation A.2 to the Office of the Deputy General Counsel (Fiscal) and redirected Recommendation A.5 to the Principal Deputy General Counsel of the Air Force. Therefore, we request that the respective offices provide comments on Recommendations A.1, A.2, A.3, A.5, and B.1c by December 13, 2004.

If possible, please send management comments in electronic format (Adobe Acrobat file only) to Audcolu@dodig.osd.mil. Copies of the management comments must contain the actual signature of the authorizing official. We cannot accept the / Signed / symbol in place of the actual signature. If you arrange to send classified comments electronically, they must be sent over the SECRET Internet Protocol Router Network (SIPRNET).

Management comments should indicate concurrence or nonconcurrence with each applicable finding and recommendation. Comments should describe actions taken or planned in response to agreed-upon recommendations and provide the completion dates of the actions. State specific reasons for any nonconcurrence and propose alternative actions, if appropriate. Management should also comment on the material management control weaknesses discussed in Appendix A.

We appreciate the courtesies extended to the staff. Questions should be directed to Mr. James L. Kornides at (614) 751-1400 ext. 211 or Mr. Mark Starinsky at (614) 751-1400 ext.231. The team members are listed inside the back cover. See Appendix B for the report distribution.

By direction of the Deputy Inspector General for Auditing:



Paul J. Granetto, CPA
Assistant Inspector General
Defense Financial Auditing
Service

Office of the Inspector General of the Department of Defense

October 14, 2004

Report No. D-2005-003

(Project No. D2004FJ-0003)

DoD Antideficiency Act Reporting and Disciplinary Process

Executive Summary

Who Should Read This Report and Why? Senior DoD managers who are responsible for preventing or investigating Antideficiency Act (ADA) violations or for disciplining ADA violators should read this report.

Background. The Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer requested that we review the timeliness of the Defense Department's violation reporting and the appropriateness of the discipline administered for ADA violations. The ADA prohibits Federal employees from spending the Government's money in any way other than that directed by Congress. Spending more money than Congress appropriates, or spending the money before Congress appropriates it, violates the ADA. When this happens, the head of the agency where the violation occurred must notify the President and the Congress. DoD Regulations require that ADA violations be processed (investigated and reported) within 12 months of discovery.

Results. The Military Departments and the Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer did not process ADA cases within 12 months. For the 42 cases reported in FY 2002 and FY 2003, the average time required to conduct the investigation and report the ADA violation to the President and Congress was 49 months for the Army, 43 months for Navy, and 63 months for the Air Force. Case information should have been processed more efficiently, and legal reviews took too long. (See Finding A for the detailed recommendations.)

The Army and Air Force rendered appropriate disciplinary actions for ADA violations most of the time. However, Navy management did not administer formal, written disciplinary actions in most cases. There were 28 Navy ADA violation cases, in which 88 active persons were deemed responsible for the violations. Navy managers chose not to discipline 29 individuals, verbally counseled 31 individuals, and administered non-punitive written letters to 24 individuals. The remaining 4 individuals received punitive written discipline. More definitive ADA violation policy might have deterred some of these ADA violations, and more stringent requirements for formal disciplinary action should deter future ADA violations. (See Finding B for the detailed recommendations.)

Management Comments and Audit Response. The Under Secretary of Defense (Comptroller)/Chief Financial Officer, Director of Accounting and Finance Policy and Analysis, and the Assistant Secretaries of the Military Departments (Financial Management and Comptrollers), generally concurred with the recommendations or provided alternative actions in response to the recommendations. Based on their responses, we redirected or revised several recommendations and requested additional comments. (See the Finding sections for a discussion of management comments and the Management Comments section for the complete text of the comments.)

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Background

The Antideficiency Act (ADA) prohibits Federal employees from entering into contracts that exceed the amount of funding appropriated for the year, making an obligation or disbursement in excess of an apportionment or agency regulations, or purchasing services and merchandise before appropriations are enacted. The Act is codified in Title 31 of the United States Code. The law requires the agency head to immediately report any ADA violations to the President and Congress.

The Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer (the Defense Comptroller) requested that we review ADA reporting. The Defense Comptroller was concerned with the lengthy duration of violation investigations, and whether appropriate discipline was administered to violators.

The ADA establishes penalties for violations. Specifically, 31 United States Code (U.S.C.) 1349, “Adverse Personnel Actions,” requires that violators of the Act be subject to appropriate administrative discipline including, when circumstances warrant, suspension of duty without pay or removal from office. Criminal penalties may be imposed when violations are committed knowingly and willfully. Title 5 U.S.C 1215, “Disciplinary Action,” provides the types of disciplinary actions that are appropriate when a provision of a law, rule, or regulation is violated. Specifically, part a(3) describes disciplinary action as removal, reduction in grade, debarment from Federal employment for up to 5 years, suspension, reprimand, or a civil penalty up to \$1,000.

The DoD Financial Management Regulation (FMR) volume 14, “Administrative Control of Appropriations and Antideficiency Act Violations,” October 2002, provides timeframes for completing ADA investigations and general guidance on disciplinary actions. Specifically, the DoD FMR policy directs that:

- the total process for investigating and reporting potential violations take no more than one year from the date of discovery;¹
- discipline be determined through consultations involving the commander, the investigative officer, the staff judge advocate, and other appropriate authorities;
- ultimate responsibility for disciplining those responsible for ADA violations rest with the appropriate commander or other official;
- appropriate administrative discipline may include written admonishment or reprimand, reduction in grade, suspension from duty without pay, or removal from office, and
- the disciplinary official acknowledge, in writing, that he or she understands that a violation of the ADA is a violation of Federal statute; that DoD is required to report the violation to the President and Congress, even though a violation may not have been committed willfully or

¹ This provision remains unchanged from the 1995 version of the FMR.

knowingly; and disciplinary action commensurate with the severity of the violation and other factors should be taken against the responsible individual.

Objective

Our objective was to determine whether all appropriate actions were taken to ensure that ADA violation cases were processed timely and that actions taken reduced the recurrence of ADA violations. See Appendix A for a discussion of the scope and methodology, our review of the management control program, and prior coverage related to the objectives.

A. Timeliness of Antideficiency Act Violation Reporting

The Military Departments and the Office of the Defense Comptroller did not process ADA cases within 12 months as stipulated by DoD Regulations. For the 42 cases completed in FY 2002 and FY 2003², the average time required to conduct an investigation and report the violation results to the President and Congress was 49 months for the Army, 43 months for Navy, and 63 months for the Air Force. The Military Departments and the Office of the Defense Comptroller did not process ADA cases efficiently. Specifically, there were delays in:

- processing case information through the normal chains of command,
- assigning a preliminary and formal investigator,
- submitting completed cases to the Office of the Defense Comptroller,
- legal reviews, and
- coordination of cases between the Office of the Defense Comptroller and the Office of the Secretary of Defense (General Counsel).

As a result, the Military Departments did not report ADA violations in time to comply with the ADA, did not meet OSD goals, and wasted resources.

Antideficiency Act Reporting Process

The DoD FMR Volume 14, “Administrative Control of Funds and Antideficiency Act Violations,” allows the Military Departments 1 year to complete ADA violation cases. Once a potential ADA violation is identified, a preliminary review of the basic facts determines the probability of an actual violation. The DoD FMR directs that preliminary reviews be performed in a timely manner, usually within 90 days. If the preliminary review indicates that a violation probably occurred, the Military Department assigns an investigative officer to fully investigate all relevant information. When the formal investigation is complete, the Office of the Assistant Secretary (Financial Management and Comptroller) of the Military Department submits a summary report to the Office of the Defense Comptroller for review and approval. The Defense Comptroller submits ADA violation reports to the President, through the Director of the Office of Management and Budget, and to Congress.

² Includes 6 Army cases, 8 Air Force cases, and 28 Navy cases

Reporting ADA Violations to the President

ADA reporting requirements establish a sense of urgency for reporting misuse of DoD appropriations and provide a mechanism for ensuring that funding violations are visible to the President and Congress. The Office of the Secretary of Defense (OSD) attempted to fulfill this requirement through the policies it established in the DoD FMR that require ADA cases to be completed within a year. However, the Military Departments fell significantly short of this requirement. Specifically, the Navy's 43.1 months to complete ADA violation cases was the quickest of the three Military Departments, but still approached almost 4 years and was significantly beyond the standard established by the DoD FMR. Inefficient Military Department and OSD processes for overseeing and processing ADA data contributed to the length of time required to complete ADA cases.

Meeting Timeliness Goals

In FYs 2002 and 2003, DoD completed and reported results on 42 ADA cases. There were 6 reported cases in the Army, 28 in the Navy, and 8 in the Air Force. Only two of the 28 Navy ADA cases were completed within 1 year. Table 1 shows how long it took the Military Departments and OSD to complete the various phases of review.

Table 1. Summary of Average Months to Report an ADA Violation

| <u>Service</u> | <u>Preliminary Stage</u> | <u>Formal Stage</u> | <u>Total Service Time</u> | <u>OSD Comptroller Review</u> | <u>OSD Legal Review</u> | <u>Total Time</u> |
|----------------|--------------------------|---------------------|---------------------------|-------------------------------|-------------------------|-------------------|
| Army | 8.4 | 14.1 | 22.5 | 12.6 | 13.8 | 48.9 |
| Navy | 12.3 | 21.6 | 33.9 | 2.7 | 7.0 | 43.1* |
| Air Force | 15.1 | 33.9 | 49.0 | 3.2 | 10.2 | 63.2* |

*Total time is based on ADA case records at the Military Departments and includes OSD data that does not fully match the timelines in the OSD records. The differences did not affect our results or conclusions.

The amount of time spent performing the fact finding and summarization in the preliminary and formal phases was usually much less than the total amount of time necessary to complete the preliminary and formal phases of the ADA cases. Coordinating the information through several layers of command or legal review added months to the formal investigation phase while adding little to the final summary report. Additionally, the OSD review of ADA violations added many months to the cases that we reviewed. There was no documentation that

explained why it took OSD so long to complete reviews, especially for the Army cases. OSD personnel indicated that several of the Army cases required rewriting to make the case clear and understandable to all reviewers and other interested parties.

Although not specifically broken out in Table 1, documentation showed that preliminary and formal investigators completed their reviews in an average of 7.7 months for the Army, 20.7 months for the Navy, and 10.9 months for the Air Force. The time in the other stages was spent performing coordination functions that inflated the time spent in the review and investigation phases, and gave the appearance that more time was spent reviewing the facts of the cases than was actually spent.

Coordination and Progression of Case Information. The Navy and the Air Force preliminary reporting processes required several layers of command review and coordination. The layers of review and coordination led to additional delays with little value added in support of the conclusions in the cases.

Navy commands reporting potential violations prepared formal memorandums to be sent to Assistant Secretary of the Navy (ASN) (Financial Management and Comptroller) (FM&C). However, in some cases the memorandums went through three levels of review before reaching ASN (FM&C), with each level of coordination taking months before approval and submission to the next level. One Navy case went through three levels of command review and was held 6 months before being forwarded to ASN (FM&C). In another case, a memorandum was reported lost in the chain of command, and this delayed the start of the formal investigation by 21 months.

In the Air Force, ADA case information was delayed at the Major Command or lower levels by various command reviews. As an example, one Air Force formal investigation was delayed by almost 9 months because the preliminary report was held in a lower level review. There was no documentation indicating the reason for the delay.

The major commands had no reason to alter or change any of the facts or conclusions in the preliminary investigator's report. Therefore, it would have been more effective to provide the results of the preliminary investigation to the Assistant Secretary level at the same time the commands received the results.

Assignment of the Preliminary and Formal Investigator. At times all three Military Departments delayed assigning a preliminary or formal investigator. The DoD FMR requires that the major command assign the preliminary investigator relatively quickly after a potential violation is discovered. This appointment should occur within 10 to 15 days. However, in some instances, the Major Command did not assign a preliminary investigator for months after the potential violation had been discovered. For example, the Navy took more than 2 months to assign a preliminary investigator in 5 of the 28 cases. The Navy needed more than 10 months to assign an investigator for one of the five cases. The Army took more than 8 months to assign a preliminary investigator for two cases, and took more than 16 months for one of these two cases. The Air Force took more

than 2 months to start the preliminary investigation for three cases, and took more than 17 months for two of the three cases.

In addition to delays assigning a preliminary investigator, the Navy and the Air Force delayed assigning a formal investigator. In several cases, the Navy delayed the appointment of the investigative officer by assigning an individual who retired shortly after the appointment. This caused several months of unnecessary delay before another official could be appointed.

The Air Force delayed several cases although the Office of the Assistant Secretary of the Air Force had directed that the formal investigation be started. One case was delayed by almost 10 months despite repeated requests from the Assistant Secretary.

Assistant Secretary of the Army Reporting. For the six ADA cases the Army completed and reported on in FYs 2002 and 2003, the Office of the Assistant Secretary of the Army (FM&C) spent months reviewing case information before submitting the cases to the Defense Comptroller. In accordance with the DoD FMR, the Office of the Assistant Secretary of the Army (FM&C) is tasked to oversee ADA case information and submit completed cases within a year. Part of this requirement includes avoiding unnecessary delays. However, the available case records indicate that the Office of the Assistant Secretary of the Army (FM&C) averaged more than 8 months for each case review. However, the Army records contained little evidence to support a reason for delaying submission of the cases to Defense Comptroller. Additionally, Army records indicated that actions by the Army General Counsel were not a factor in the delays. The unexplained delays indicate a lack of proper oversight and assignment of a low priority to the timeliness of the Army ADA reporting process.

Air Force Legal Reviews. For the eight Air Force ADA cases, the Air Force legal staff performed an average of five legal reviews, which usually included at least two lower-level (base and command level) legal opinions and the Secretary of the Air Force General Counsel opinion. Frequently, the Air Force Office of General Counsel overturned the lower-level opinions. According to the Secretary of the Air Force Office of General Counsel, lower-level decisions were frequently overturned because many of the base-level legal staff lacked expertise in fiscal law. We did not determine how much time each lower-level legal review added to the process because documentation was not available; but the Secretary of the Air Force Office of General Counsel averaged almost 6 months to review a case, with only one case being reviewed within 1 month, and one case taking more than 15 months.

The Air Force ADA records showed the preliminary and formal investigations took an average of 10.9 months. Adding almost 6 months, on average, for the headquarters-level legal review and opinion and at least two more lower-level legal reviews and opinions seemed excessive and a waste of Air Force legal resources. In our opinion, the Air Force can change their ADA legal review process to reduce legal review time. Specifically, the Air Force can either eliminate the lower-level legal reviews since higher-level legal offices often overturn them, or allow the Secretary of the Air Force Office of General Counsel

to endorse accurate lower-level legal opinions. Fewer Air Force legal reviews and opinions would improve the timeliness of ADA reporting.

Office of the Deputy General Counsel and Comptroller Reviews. For all three Military Departments, the Office of Deputy General Counsel (Fiscal) processing of ADA cases and the Defense Comptroller review and coordination was lengthy. On average, the OSD review took 26.4 months for the Army cases, 9.3 months for the Navy cases, and 13.4 months for the Air Force cases.

OSD Comptroller records indicated that it took the Office of Deputy General Counsel (Fiscal) an average of 9 months to review the cases referred to it. In addition, the Office of the Defense Comptroller took an average of 12 months to coordinate Army cases, with a more acceptable—though still lengthy—time of 3 months for the Navy and Air Force. Records were not available to determine why the OSD reviews were so lengthy. However, OSD personnel indicated that the Army cases were sometimes delayed to perform rewrites. OSD took too long to review ADA violations and Office of the Deputy General Counsel and Comptroller employees needed to process case information sooner.

OSD took some action during the audit to improve the coordination of ADA case information. Specifically, on November 19, 2003, the Office of the Defense Comptroller issued a policy letter, “Processing of ADA Violation Cases,” that requires the Military Departments to submit ADA cases for OSD legal review prior to disciplining responsible officials. This policy was implemented to prevent instances in which the Office of the Deputy General Counsel disagrees that an ADA violation has occurred after a Military Department has administered punishment to the responsible official. Because the policy was not in effect when the FY 2002 and 2003 violations were processed, we could not determine whether it will improve the timeliness of OSD level review of ADA cases.

Summary

If the Military Departments and OSD do not effectively address ADA violation processing inefficiencies, reports will continue to lag behind acceptable and achievable levels. Process improvements should include more efficient coordination of case information at all levels of review; fewer levels of legal review, especially for Air Force cases; and more timely review at the Assistant Secretary and OSD levels.

Recommendations, Management Comments, and Audit Response

Redirected Recommendation. We revised recommendation A.1. to make it more clear. We redirected recommendation A.2. to the Office of the Deputy General Counsel (Fiscal) based on comments from the Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer. We also redirected recommendation A.5. based on comments from the Assistant Secretary of the Air

Force (FM&C) that he has no authority over the Air Force Office of General Counsel or the Air Force Office of Staff Judge Advocate.

A.1. We recommend that the Under Secretary of Defense (Comptroller)/Chief Financial Officer revise the DoD Financial Management Regulation, Volume 14, “Administrative Control of Appropriations and Antideficiency Act Violations,” October 2002, to require that the Military Departments submit preliminary review and formal investigation reports concurrently to the Office of the Assistant Secretary (Financial Management and Comptroller) while the reports are going through the command chain.

OSD(C) Comments. The Director of Accounting and Finance Policy and Analysis nonconcurred, stating that the fundamental structure and operation of the Department of Defense is based on adherence to the chain-of-command. The Director stated that it would be inappropriate and counterproductive for the OSD Comptroller to direct that investigation reports bypass the chain of command. She also stated that it would be more appropriate and productive for the OSD Comptroller to recommend that the Military Departments use the results of this report to review and revise their investigation reporting process to ensure compliance with the Volume 14 timeframes.

Audit Response. We do not fully agree with the Director’s comments. We agree that the Military Departments should review and revise their ADA investigative reporting processes to improve the timeliness of reporting ADA violations. However, the DoD FMR should be revised to move reports more efficiently through the command chains. Our recommendation does not preclude the lower-level and intermediate command chain from reviewing the ADA information. All appropriate officials would still be notified of potential ADA violations concurrently. These lower and interim offices were not refining the ADA information so a notification is sufficient. Alerting the Offices of Financial Management and Comptroller at the earliest opportunity will allow oversight personnel to determine whether the ADA cases merit further processing and will reduce processing time.

ADA processes are already in place within the Navy for the formal investigation that are similar to our recommendation. Specifically, within the Navy many ADA investigations are performed by personnel within the Office of Financial Management and Comptroller. The FM&C personnel coordinate their results with the Office of General Counsel and then provide them to disciplinary offices. In effect, the Navy FM&C process prevents delays caused by transmitting information through several command chains. We clarified our recommendation to specify that the reports be submitted to the Military Department offices of FM&C at the same time that the reports are moving through the command chain. We request that the Director reconsider her comments and provide additional comments on the final report.

Navy Comments. Although not required to comment, the Assistant Secretary of the Navy (FM&C) disagreed with the recommendation related to the preliminary process, stating that submitting the preliminary report through the chain of command improves the quality of the report and the data provided. He also stated that direct submission of preliminary reports would require formal return of the

preliminary reports for additional information and would increase processing time.

Audit Response. We disagree with the Navy comments. Within the Navy, preliminary reports are typically prepared at the operating level where the potential violation occurred. Formal investigative reports are prepared at the Assistant Secretary of the Navy (FM&C) level in conjunction with Navy General Counsel. Therefore, the formal investigations do not strictly follow the “chain of command.” Within the Military Departments, changes to ADA case information are generally not made by higher command levels. ADA reports submitted by the Navy to OSD do not typically include significant changes made by major commands. Quality improvements are normally made by Assistant Secretary Financial Management and Comptroller staff. In general, long delays in Navy Major Commands’ ADA reporting resulted from delayed assignment of an investigative officer.

A.2. We recommend that the Office of the Deputy General Counsel (Fiscal) establish policies to prioritize workloads so that ADA cases are reviewed and completed more expediently. The policy should include, at a minimum, target deadlines for completing legal reviews of ADA cases.

OSD(C) Comments. The Director, Accounting and Finance Policy and Analysis concurred and stated that the Office of the Deputy General Counsel (Fiscal) has implemented this recommendation by setting a goal to review cases within 1 week of transmission and to complete cases within 1 month. The Director stated that the goal has been effectively implemented.

Audit Response. While the Director’s comments are responsive, we revised the recommendation to direct it to the proper office and now request comments from the Office of the Deputy General Counsel (Fiscal).

A.3. We recommend that the Assistant Secretaries of the Navy and Air Force each issue a policy letter to lower level commands stressing the importance of starting and completing preliminary ADA reviews and formal investigations as soon as possible, and in accordance with the DoD Financial Management Regulation. In particular, the Navy needs to ensure that the assigned investigative officer is available to perform the investigation. The Air Force needs to ensure that its Major Commands assign an Investigating Officer in a reasonable amount of time.

Navy Comments. The Assistant Secretary nonconcurred stating that he has already issued policy letters to lower-level commands stressing the importance of completing the ADA investigations within the required timeframe. He stated that improvements are being made, and that the Navy was the only Department to complete an ADA within the 9 month timeframe.

Audit Response. Although the Assistant Secretary nonconcurred, we agree that the Navy has issued policy letters in the past and improvements are pending. The Navy was the only Military Department to complete an ADA investigation within a 9 month timeframe.

Air Force Comments. The Assistant Secretary of the Air Force concurred and issued a memorandum to the major commands stressing the importance of completing formal investigations on time and of assigning an investigative officer within 15 business days after receipt of direction to begin the investigation.

A.4. We recommend that the Assistant Secretary of the Army (Financial Management and Comptroller) establish procedures that ensure the timely review and processing of ADA cases. Specifically, establish deadlines for submitting cases to the Defense Comptroller, and justify delays in submission of the cases.

Management Comments. The Assistant Secretary of the Army (FM&C) concurred and stated that five active measures to implement improvements have already been taken including establishing deadlines for all delinquent cases and reporting monthly status to OSD(C).

A.5. We recommend that the Principal Deputy General Counsel of the Air Force direct that no more than one lower-level legal opinion be conducted in ADA cases and allow Air Force Office of General Counsel staff to endorse lower-level legal opinions.

Management Comments. The Assistant Secretary of the Air Force for Financial Management and Comptroller stated that the authority to reduce legal opinions rests within the Office of General Counsel of the Air Force. Therefore, we are redirecting this recommendation. We request that the Principal Deputy General Counsel of the Air Force provide comments.

B. Improving the Antideficiency Act Disciplinary Process

The Army and Air Force rendered more formal disciplinary actions for ADA violations than did the Navy. In most cases, Navy supervisors did not administer formal written discipline. In the 28 cases, in which 88 responsible personnel could have been disciplined, Navy disciplinary officers chose not to discipline 29 individuals, administered verbal discipline to 31 individuals, and administered non-punitive written letters to 24 individuals. The remaining four responsible individuals received formal written discipline. These conditions existed in the Navy because:

- Naval disciplinary, legal, and investigative personnel stated that they considered many violations “technical” and without harm to the Navy,
- Naval disciplinary officers had been named as ADA violators in the same and similar cases,
- Naval disciplinary officers questioned the validity of the investigative officers’ conclusions, and
- Naval disciplinary officers administered types of discipline neither spelled out in nor consistent with the examples provided in the United States Code.

Without an increase in the Navy’s perception of the seriousness of Antideficiency Act violations, there is increased risk that personnel will misuse funds without threat of punishment; and the comparatively high number of ADA violations in the Navy could continue.

ADA Cases in the Army and Air Force

For FYs 2002 and 2003, the Army and Air Force processed and reported a total of 14 ADA violation cases, half as many as the Navy. For those 14 cases, the Army and Air Force named 25 individuals (still actively employed) responsible. Table 2 shows a breakdown of the discipline administered by the Army and Air Force.

Table 2. Army and Air Force Discipline

| Type of Discipline | Number of Active Individuals |
|-------------------------|------------------------------|
| No Discipline | 7 |
| Verbal Discipline | 1 |
| Non-Punitive Discipline | 3 |
| Formal Discipline* | 14 |
| Total | 25 |

*Consists of written reprimand, reassigned/removal from position, suspension, or unfavorable evaluation.

The data in Table 2 indicate that the Army and Air Force personnel recognize the seriousness of ADA violations and are inclined to administer formal discipline (such as a written reprimand) to

ADA violators.

ADA Cases in the Navy

Identifying, Investigating, and Reporting Navy ADA Violations. Potential Navy ADA violations are identified through various sources including the DoD Hotline, DoD Inspector General audits, Naval Inspector General inquiries, and other internal and external reviews.

The DoD FMR requires that the Office of the Assistant Secretary of the Navy (FM&C) be notified of potential ADA violations. DoD policy requires that the Navy command or activity assign a preliminary review officer to determine whether a violation has apparently occurred. If the preliminary review officer determines that it is apparent that a violation has occurred, a formal investigation is initiated. The Assistant Secretary of the Navy (FM&C) assigns the formal investigator. The purpose of the formal investigation is to determine the relevant facts and circumstances concerning the potential violation; and, if a violation has occurred, what caused it, what the corrective actions are, and who was responsible for the violation. If a violation has occurred, the investigative officer prepares a report of violation and coordinates the findings with the Assistant Secretary of the Navy (FM&C) legal counsel.

Navy commanding officials are required to discipline those responsible for Antideficiency Act violations in accordance with 31 USC 1349 and DoD FMR Volume 14, chapter 9, "Disciplinary Actions," October 2002.

Navy Disciplinary Attitude

Navy needed to improve its compliance with the disciplinary requirements of the Antideficiency Act. For completed ADA violation cases in FY 2002 and 2003, Navy supervisors responsible for administering discipline were reluctant to administer any type of formal discipline, even in cases of apparent abuse of funds.

Active versus Retired Responsible Personnel. Of the 128 ADA violators named in the 28 Navy cases included in our review, 40 responsible personnel had retired prior to the Navy administering discipline for their ADA violations. Thirty-four of the 40 who retired were not disciplined.

DoD policy does not preclude discipline of retired ADA violators if they are still employed by DoD. Insufficient data were available to determine how many of the 40 personnel were still employed by DoD at the time the Navy identified them as responsible officials. Therefore, our analysis focused on responsible officials who were still working for the Navy at the time the Navy cases were completed. Table 3 shows how Navy disciplinary officers disciplined 88 ADA violators who were still Navy employees.

Table 3. Breakout of Navy Discipline

| Type of Discipline | Number of Active Individuals |
|-------------------------|------------------------------|
| No Discipline | 29 |
| Verbal Discipline | 31 |
| Non-Punitive Discipline | 24 |
| Formal Discipline* | 4 |
| Total | 88 |

*Consists of written reprimand or reassignment/removal from position.

In two Navy cases, the records showed the investigative officer had determined that there was evidence that ADA violators had acted knowingly and willfully, and referred the cases to the appropriate state or Federal Attorney General's office for prosecution. Despite conclusions that the responsible individuals had knowingly and willfully violated the ADA, the strongest discipline issued by the disciplinary officers for these cases was a written letter of caution.

In two other instances, the records showed that the investigative officer concluded that high-level Navy managers granted waivers to use non-

procurement funds to purchase general purpose vehicles such as trucks, vans, and sport utility vehicles. Through the use of waivers, Navy management was able to inappropriately authorize the use of Operation and Maintenance; Family Housing; and Research, Development, Test, and Evaluation funds to purchase 94 vehicles. Vehicles are normally funded with Other Procurement funds. Despite this obvious misuse of Navy funds, the strongest discipline administered by disciplinary officers in these cases was verbal counseling.

In another case, the investigative officer concluded that Naval Officers inappropriately designated portions of officers' quarters, including their primary residence, as "common areas." Inappropriately designating officer quarters as common areas allowed naval officers to spend Navy Operation and Maintenance funds that exceeded Congressionally determined levels. In this case, it was very apparent that the reason for designating part of the officers' quarters as common areas was to avoid the Congressional spending limit. Despite relatively straightforward attempts to circumvent legal spending limits, disciplinary officers in this situation did not discipline the 16 active duty violators, in part because the Chief of Naval Operations sent a letter to the Naval IG stating that no discipline was warranted for all those named responsible.

In response to this case, the Assistant Secretary of the Navy (Financial Management and Comptroller) senior civilian official sent a memo to the DoD Comptroller stating that although the IG DoD report had identified numerous individuals who made obligations by placing contracts or authorized obligations by providing funds, it was clear that the individuals were not solely responsible. The official also stated that the ADA violation occurred because the Navy has a culture of getting the job done using the information at hand and that the culture permeates the shore establishment.

Recognition of Reported Violations

Naval disciplinary officers were reluctant to administer appropriate administrative discipline for several cultural reasons.

Violations Perceived as Technical. In 7 of the 28 Navy cases, either the disciplinary officer or a member of legal counsel stated that the violation was technical, minor, or not harmful. For example,

- two disciplinary officers in two different cases noted that "there was no actual deficiency, nor did the Government suffer any harm."
- as part of the procedural corrections, the Deputy Under Secretary of the Navy issued a memorandum concerning the requirement to notify Congress of a decision to contract for a cost study. In this memorandum, he states, "These good intentioned, but incorrect actions, resulted in technical Anti-Deficiency Act violations."
- a legal advisor indicated that "the nature of the violation was exceedingly technical and that the violation apparently did not involve any gross

negligence, malfeasance or incompetence... nor was the violation apparently willful or knowing."

These statements show a pattern of rationalizations in which disciplinary officers appear to conclude that the ADA violations were insignificant and therefore discipline was not warranted.

Responsible Officials and Disciplinary Officers. Naval disciplinary officers have been named as responsible parties in the same and similar cases. For example, in the case in which the Navy officer granted a waiver to permit non-procurement funds to be used to purchase vehicles, the disciplinary officer was also named as a responsible official for the violation. The disciplinary officer, a Commanding Officer, decided that no discipline was warranted for the responsible official, a retired Comptroller.

Responsible officials were also disciplinary officers in a case where Navy personnel used family housing construction funds before the required Congressional notification occurred. For administrative convenience, and to simplify his investigation process, the investigating officer separated the violation into several ADA cases. Although the cases were investigated separately, they were linked in that the same personnel were involved. However, a responsible official from one of these cases was the disciplinary officer in another of the related cases.

The two examples clearly demonstrate a conflict of interest in the Navy ADA disciplinary process that prevents the likelihood of appropriate administrative discipline. Additional oversight to prevent future instances is needed.

Accepting Investigative Officer Conclusions. Naval disciplinary officers questioned the validity of the investigative officers' conclusions. In many instances, disciplinary officers disagreed with and were reluctant to accept the findings of investigative officers. For example,

- The Commander, Naval Facilities Engineering Command prepared an 18 page document disputing the investigative officer's finding. Specifically, he stated, "the investigator's own findings compel the logical and necessary result that a finding of responsibility lies not with those individuals charged with following incorrect operating guidance, but with those individuals charged with responsibility for creating, providing and updating, that erroneous guidance." One active individual was not disciplined, and the other received verbal counseling.
- One disciplinary official explained his decision to not discipline a responsible official "it appears that [deleted] has been identified as a responsible official in error, and the actual cause of any potential ADA violation may rest elsewhere." He added, "If there was an ADA violation, there is not enough information in the Investigative Report to establish that Third Fleet can be held responsible." He also added, "even if the actions of Third Fleet contributed to an ADA violation, Third Fleet can not be held responsible for it. By not taking immediate, appropriate

action, the COMPACFLT comptroller staff may actually be responsible for any ADA violation.” The responsible official received no discipline.

- A responsible official stated that he believed it unfair to hold the installation commander responsible for resulting shortfalls, particularly where those shortfalls were inconclusive, and at best very minor. His disciplinary officer agreed with the sentiment and stated that “as commander of the major base, …[he] held ultimate responsibility for over \$100M in yearly funds, against which the amount of the violation was \$8K. As a practical matter, given the size and complexity of this base’s operations, the Commander must pass management of these funds to his staff, and cannot be aware of all of the thousands of minor obligations and transactions which occur on his base.” The Commander was not disciplined.

Crafting Different Types of Discipline. Naval disciplinary officers administered discipline not specifically spelled out in, or consistent with, the examples in the United States Code. Examples of disciplinary actions in the United States Code are very limited. The lowest form of administrative discipline suggested in 5 U.S.C. 1215 “Disciplinary Action” is a reprimand. However, in many FY 2002 and 2003 completed cases, Navy disciplinary officers determined that verbal counseling or non-punitive written counseling were appropriate disciplinary measures. In 24 of 28 cases, the responsible official received no more than verbal or non-punitive written counseling. These disciplinary actions, in particular the verbal counseling, are informal and appear to be discipline that could occur in the normal course of daily operations. As a result, when Navy disciplinary officers administered verbal and other non-punitive types of discipline for the misuse of funds, it is questionable whether the discipline was appropriate.

Consistency of ADA Disciplinary Policies. The DoD implementing policies for disciplining responsible officials for ADA violations may have contributed to the lack of formal discipline. Although the ADA clauses in the United States Code are not intended to be all inclusive, they provide mostly formal administrative discipline. Specifically, 31 U.S.C. 1349, “Adverse Personnel Actions,” requires that violators of the ADA be subject to appropriate administrative discipline including, when circumstances warrant, suspension of duty without pay or removal from office. In addition, 5 U.S.C. 1215 part a(3) describes disciplinary action as removal, reduction in grade, debarment from Federal employment for a period up to five years, suspension, reprimand, or an assessment of a civil penalty up to \$1,000.

The DoD FMR Volume 14, “Administrative Control of Appropriations,” October 2002, implements the ADA disciplinary requirements of the United States Code and provides examples of disciplinary measures that may be taken for ADA violations. In addition to the types of discipline listed in the United States Code, the DoD policy includes written admonishment as a type of administrative discipline. Therefore the DoD FMR policy includes an additional type of discipline considered to be acceptable for ADA violations. Further, DoD Directive 7200.1, “Administrative Control of Appropriations” May 4, 1995, expands the types of administrative discipline for ADA violations beyond the

FMR. The DoD Directive includes admonishment and reprimand as appropriate administrative discipline but does not specifically require that these types of discipline be written. These inconsistent DoD implementing policies may have directly contributed to the Navy practice of administering verbal and non-punitive discipline instead of the more formal types presented in the United States Code.

However, the inconsistency in the DoD FMR and DoD Directive ADA disciplinary policy does not explain the high number of instances in which Navy disciplinary officers administered no discipline, which is more reflective of the Navy practice of considering ADA violations as minor or technical.

Need for Change. Unless the Navy changes its cultural perception of the seriousness of ADA violations, Navy personnel will continue to perceive a low level of risk if they abuse Navy funds because there will be little likelihood of discipline. Without cultural change, the high number of Antideficiency Act violations in the Navy will continue.

Management Comments on the Finding and Audit Response

OSD(C) Comments. The Director of Accounting and Finance Policy and Analysis in the Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer stated that her office takes the requirements of the ADA seriously and recognizes the seriousness of possible violations. However, the Director questioned the applicability of Title 5 USC 1215 to ADA cases and believed that it was irrelevant to any disciplinary or administrative actions taken in response to ADA violations.

Audit Response. We agree that the Office of the Under Secretary of Defense takes ADA violations very seriously. As discussed in the Finding, examples and definitions of administrative discipline in the United States Code are very limited. We provided a reference to Title 5 USC 1215 to provide available examples of discipline provided in Federal policy. The reference to Title 5 USC 1215 was not provided to suggest that it represents authoritative guidance related to the ADA. In contrast, it was provided to demonstrate the types of discipline provided for in the United States Code.

Navy Comments. The Assistant Secretary of the Navy (FM&C) stated that the Navy considers ADA violations a serious matter and that three cases that the Navy determined were violations were subsequently overturned by DoD General Counsel. He advised that the Navy is bound by the decision of its supervisors and managers with respect to the proper level of discipline. He also stated that the Navy managers are bound by law and precedent to consider whether a violation is technical in nature and weigh its harm to the agency.

Audit Response. We acknowledge that Navy top management takes ADA violations seriously. However, the discipline records for FY 2002 and 2003 indicate that ADA violators in the Navy rarely received more than some type of verbal discipline, even in situations where the abuse was overt. We also agree that the OSD and Navy Offices of General Counsel consider the Department

bound by the disciplinary decision of the violator's immediate supervisor. However, in many cases, it was questionable whether the supervisor properly considered the investigative officer's conclusions when deciding the discipline to be administered. In these instances, changes in DoD policy are needed to give proper weight to conclusions reached by investigative officers.

Recommendations, Management Comments, and Audit Response

Revised Recommendation. We revised recommendation B.2. based on comments from the Office of the Under Secretary (Comptroller)/Chief Financial Officer to clarify that discipline should always be administered to meet the intent of the ADA. We also revised the recommendation to address concerns by the Director of Accounting and Finance Policy and Analysis that requiring formal, written ADA discipline would be legally objectionable. For the full text of management comments, see the management comments section.

B.1. We recommend that the Under Secretary of Defense (Comptroller)/Chief Financial Officer revise the DoD Financial Management Regulation Volume 14, “Administrative Control of Appropriations and Antideficiency Act Violations” to:

a. Require that disciplinary officers acknowledge, in writing, that ADA violations are a misuse of DoD funds even though the misuse may not have been knowing or willful and despite whether the disciplinary officer considers the misuse of funds harmful to the Navy.

OSD(C) Comments. The Director, Accounting and Finance Policy and Analysis, concurred with the recommendation and stated that, if implemented, it would apply to all Military Departments.

b. Require that the Military Department Offices of Financial Management and Comptroller verify the independence of disciplinary officers before disciplinary officers are chosen to review cases and administer discipline,

OSD(C) Comments. The Director, Accounting and Finance Policy and Analysis concurred with the recommendation and stated that the DoD FMR Volume 14, Chapter 9 will be updated to clearly state that personnel implicated in an ADA violation are ineligible to administer discipline. The Director also stated that the Military Departments will be instructed to notify their commands to appoint disciplinary officers whose independence is not impaired.

c. Require that Military Department Offices of Assistant Secretary for Financial Management and Comptroller refuse to accept disciplinary officers' conclusions that investigative officers' findings are invalid, and direct that such cases be elevated to higher or alternative chains of command until resolved.

OSD(C) Comments. The Director, Accounting and Finance Policy and Analysis, nonconcurred, stating that the investigating officer's role is to gather facts and the disciplinary officer's responsibility is to make a conclusion based on the facts. The Director also stated that commanders and supervisors, with the assistance of counsel, determine existence of ADA violations and whether or not a violation was knowing and willful. She also indicated that such a recommendation should reflect the fact that the disciplinary officer should only discount the investigative officer's findings based on other verifiable and supporting facts. The Director further stated that OSD(C) compliance with this recommendation would raise the appearance of improper command influence and would be subject to criticism and questioning. Lastly, she stated that compliance with the recommendation may be considered a prohibited personnel practice.

Audit Response. The Director's comments are not responsive. We agree that supervisors and commanders should be able to discount investigative officer conclusions when other facts are available to refute them. However, the Navy ADA cases in which commanders did not accept the facts and conclusions of the investigative officer had the effect of voiding the investigative officer's work with little justification. Therefore, the addition of a policy to address these circumstances is warranted. Another independent level of review of the commander's decision on discipline would reduce the appearance that the commanding officer had a preconceived notion of appropriate discipline (or no need to administer discipline) without regard to the findings and conclusions of the investigative officer.

Additionally, while commanders and supervisors are involved in the ADA investigation process, they do not ultimately make the final decision about whether or not an ADA violation occurred. This decision is the responsibility of the Office of the General Counsel (Fiscal). In many instances within the Navy, disciplinary officers were reluctant to agree with the investigating officer's conclusions but did not offer other facts to support a different conclusion. Instead, disciplinary officers justified their decision not to administer discipline through rationalizations such as the conclusion that violations were "technical" and resulted in no harm to the Navy, even though the subject cases were evident examples of abuse. We request that the Director reconsider her comments and provide additional comments to the final report.

B.2. We recommend that the Under Secretary of Defense (Comptroller)/Chief Financial Officer advise the Military Departments to review the results of this report when considering discipline for ADA violations and administer discipline that is in accordance with the Antideficiency Act.

Management Comments. The Director of Accounting and Finance Policy and Analysis stated that this report would be useful in ensuring that discipline would be administered to meet the intent of the ADA. We revised the draft recommendation to address her concern about requiring that ADA discipline be in writing.

Appendix A. Scope and Methodology

We reviewed Army, Navy, and Air Force ADA cases closed in FYs 2002 and 2003. We considered the case closed when OSD dated the transmittal memorandum to the President and Congress, or made the determination that there was no violation of the Antideficiency Act. Specifically, we reviewed six reported ADA violations and four no violation findings for the Army; 28 reported ADA violations and three no violations for the Navy; and eight reported ADA violations and six no violation findings for the Air Force. We reviewed when the violation was discovered, when the investigation began, when it was sent to OSD, and when it was sent to OMB, Congress, and the President. We also determined in which DoD activity the violation occurred, who was named responsible, how they were disciplined, and what corrective actions were taken.

We analyzed the time frames of the investigations and the consistency and adequacy of the disciplinary processes. We interviewed Army, Navy, Air Force, and OSD personnel involved in the coordination and submission of the cases, along with the respective legal counsel. We determined whether the ADA cases were completed in accordance with the DoD FMR Volume 14, "Administrative Control of Appropriations and Antideficiency Act Violations," October 2002, DoD Directive 7200.1, "Administrative Control of Appropriations" May 4, 1995, and Title 31 of the United States Code.

Our scope was limited in that we could not locate all information in all Military Department ADA files. In some instances, we could not determine when the memos were received based on the available data. As a result, we used the best available data to perform our analysis. Many of the dates we used in our analysis were based on memo dates, and referenced dates in other documents.

We performed this audit from October 2003 through April 2004 in accordance with generally accepted government auditing standards.

Use of Computer-Processed Data. We did not use computer-processed data to perform this audit.

General Accounting Office High-Risk Area. The General Accounting Office has identified several high-risk areas in DoD. This report provides coverage of the Defense Infrastructure Management high-risk area.

Management Control Program Review

DoD Directive 5010.38, "Management Control (MC) Program," August 26, 1996, and DoD Instruction 5010.40, "Management Control (MC) Program Procedures," August 28, 1996, require DoD organizations to implement a comprehensive system of management controls that provides reasonable assurance that programs are operating as intended and to evaluate the adequacy of the controls.

Scope of the Review of the Management Control Program. We reviewed the Office of the Secretary of Defense (Comptroller)/Chief Financial Officer and Military Department Offices of Financial Management and Comptroller management controls over processing Antideficiency Act cases and disciplining those responsible for Antideficiency Act violations. We reviewed the DoD Financial Management Regulations and Directives in place for ensuring compliance with the requirements of the Antideficiency Act as they relate to timeliness of violation reports and administering discipline. We also reviewed the adequacy of management's self-evaluation of those controls.

Adequacy of Management Controls. We identified a management control weakness for the Office of the Secretary of Defense (Comptroller)/Chief Financial Officer and the Military Departments and an additional weakness for the Department of the Navy, as defined by DoD Instruction 5010.40. The Comptroller and Military Department management controls for processing Antideficiency Act violation cases were not adequate to ensure that violations were researched and reported timely and efficiently. In addition, the Department of the Navy management controls for administering appropriate discipline for Antideficiency Act violations did not meet the intent of the Antideficiency Act in several abusive instances. Recommendations A.1, A.2, A.3, A.4, A.5, B.1, and B.2, if implemented, will correct the identified weaknesses and could result in reduced cases of Antideficiency Act violations. A copy of the report will be provided to the senior official responsible for management controls in the Office of the Secretary of Defense (Comptroller)/Chief Financial Officer and the Military Department Offices of Financial Management and Comptroller.

Adequacy of Management's Self-Evaluation. The Office of the Secretary of Defense (Comptroller)/Chief Financial Officer and the Military Departments identified the timely reporting of Antideficiency Act violations as part of an assessable unit and were aware of the weakness identified by the audit; however, DoD officials did not report the weakness in their annual statements of assurance because they did not consider it important enough to report to higher management. The Department of the Navy identified administering discipline as part of an assessable unit. However, in its evaluation, Navy officials did not identify the specific management control weakness identified by the audit because the evaluation covered a broader area.

Prior Coverage

During the past 5 years, the Naval Audit Service has issued one report related to the timeliness and discipline of ADA cases. Restricted access to Naval Audit Service reports with Internet domains of mil, gao.gov, house.gov, and senate.gov. can be accessed over the Internet at <http://www.hq.navy.mil/navalaudit/>.

Naval Audit Service Report No. N2003-0077, Department of the Navy Review Process for Potential Antideficiency Act Violations, August 26, 2003.

Appendix B. Report Distribution

Office of the Secretary of Defense

Under Secretary of Defense (Comptroller)/Chief Financial Officer
Deputy Chief Financial Officer
Deputy Comptroller (Program/Budget)
Office of the Deputy General Counsel (Fiscal)

Department of the Army

Assistant Secretary of the Army (Financial Management and Comptroller)
Auditor General, Department of the Army

Department of the Navy

Assistant Secretary of the Navy (Financial Management and Comptroller)
Assistant Secretary of the Navy (Manpower and Reserve Affairs)
Naval Inspector General
Auditor General, Department of the Navy

Department of the Air Force

Assistant Secretary of the Air Force (Financial Management and Comptroller)
Auditor General, Department of the Air Force
Deputy Principal General Counsel

Non-Defense Federal Organization

Office of Management and Budget

Congressional Committees and Subcommittees, Chairman and Ranking Minority Member

Senate Committee on Appropriations
Senate Subcommittee on Defense, Committee on Appropriations
Senate Committee on Armed Services
Senate Committee on Governmental Affairs
House Committee on Appropriations
House Subcommittee on Defense, Committee on Appropriations
House Committee on Armed Services
House Committee on Government Reform

Congressional Committees and Subcommittees, Chairman and Ranking Minority Member (cont.)

House Subcommittee on Government Efficiency and Financial Management, Committee on Government Reform

House Subcommittee on National Security, Emerging Threats, and International Relations, Committee on Government Reform

House Subcommittee on Technology, Information Policy, Intergovernmental Relations, and the Census, Committee on Government Reform

Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer Comments



**OFFICE OF THE UNDER SECRETARY OF DEFENSE
1100 DEFENSE PENTAGON
WASHINGTON, DC 20301-1100**

AUG 24 2004

**MEMORANDUM FOR PROGRAM DIRECTOR, DEFENSE FINANCIAL AUDIT SERVICE,
OFFICE OF INSPECTOR GENERAL, DEPARTMENT OF
DEFENSE**

SUBJECT: Draft Report on Department of Defense (DoD) Antideficiency Act (ADA)
Reporting and Disciplinary Process (Project No. D2004FJ-0003)

This is in response to your draft report of May 17, 2004, provided to this office for review and comment. I appreciate your efforts to complete this audit at our request. The Office of the Under Secretary of Defense (Comptroller) (OUSD(C)) and the Military Departments take seriously the requirements in the ADA and recognize the seriousness of possible violations. Our comments on the draft report follow, and our detailed responses to the recommendations contained in the draft report are attached. We request that you reconsider your recommendations and refocus them on OUSD(C) continuing to partner with the Military Departments to use the results of this report to review and reconsider necessary changes to the ADA investigation process.

Upon review of the draft report, we identified an inconsistency in the "Department of Defense Financial Management Regulation" ("DoDFMR"), Volume 14 regarding the time frame in which ADA violation investigations are completed. In some places the 12-month time frame includes the preliminary investigation and in others the time frame begins the date the formal investigating officer is assigned. The draft report indicates the preliminary investigation was included in your time measurements. It is our intent that the period for the preliminary investigation should not be included in the time frame in which ADA violation investigations are to be completed. We will update the "DoDFMR" to eliminate this inconsistency and clearly state that the 12-month time frame begins when the formal investigating officer is assigned. In addition, we will include guidance regarding a proposed timeline for completing the preliminary investigations.

Although specific disciplinary statutes are not cited in the report recommendations, the report does not address all applicable ADA disciplinary statutes and includes one that does not apply to ADA violations. Both Title 31, United States Code (USC), section 1349, which is mentioned in the report, and Title 31, USC, section 1518, which is not mentioned in the report, state that discipline in response to an ADA violation is to be "appropriate discipline including, when circumstances warrant, suspension from duty without pay or removal from office." Title 5 USC 1215, which is cited in the report, is only applicable to Merit Systems Protection Board prohibited personnel practice cases. Therefore, any punishments mentioned in that statute are irrelevant to any disciplinary or administrative actions taken in response to ADA violations.

Revised
Appendix A

In the course of your audit work, you examined the management controls over processing ADA cases. We request that you reconsider that the finding is a material management control weakness for the OUSD(C) and the Military Departments because there are not adequate controls to ensure that violations were researched and reported timely and efficiently. My office has made significant progress in completing ADA investigations by partnering with the Military Departments to complete their investigations more timely. The "DoDFMR" Volume 14 requires the Military Departments to report monthly on the status of their open ADA investigations. OUSD(C) reviews those reports to determine if the investigations are progressing in a positive manner. If an investigation is delayed or otherwise impeded, we provide additional guidance and assistance. In fiscal year (FY) 2001, we started a financial management metric program and ADA violations are one of the items measured on a monthly basis. This executive level monthly review ensures that ADAs continue to remain a priority for the Military Departments. Because of this focused oversight, the Department completed and reported to Congress and the President 42 violations in FYs 2002 and 2003 which were more than the 40 violations reported in FYs 1997 through 2001 combined. Our goals for FY 2004 are to complete all ADA cases that were over 12 months old as of October 1, 2003, and to complete all subsequent investigations within the 12-month time frame.

In early 2004 the Assistant Secretary of the Army (Financial Management and Comptroller) (ASA(FM&C)) tasked all its Commands to report on open ADA investigations and their progress during quarterly Army-wide Joint Reconciliation Program Updates. Any suspense not met must be explained in detail with specific timelines for corrective action. In addition the ASA(FM&C) is working monthly with the major Commands to discuss outstanding issues and address barriers preventing the ASA(FM&C) from closing old investigations. The ASA(FM&C) has submitted 15 ADA violations since January 2004, which is more than were submitted in FYs 2001 through 2003 combined.

My point of contact is Ms. Becky Allen. She can be contacted by telephone at 703-697-0718 or email at becky.allen@osd.mil


Terri McKay
Director, Accounting and Finance Policy and Analysis

Attachment:
As stated

cc: ASA(FM&C)
ASN(FM&C)
SAF/FP

DRAFT REPORT DATED MAY 17, 2004
IG, DOD PROJECT NUMBER D2004FJ-0003

"DoD Antideficiency Act (ADA) Reporting and Disciplinary Process"

RECOMMENDATION A.1: The IG, DoD recommended that the Under Secretary of Defense (Comptroller)/Chief Financial Officer revise the DoD Financial Management Regulation, Volume 14, "Administrative Control of Appropriations and Antideficiency Act Violation," October 2002, to require that the Military Departments submit preliminary review and formal investigation reports to the Office of the Assistant Secretary (Financial Management and Comptroller) at the time they are completed instead of waiting for the report to filter through the command chain.

USD(C) RESPONSE: Nonconcur. We agree that coordinating and submitting the report between non-value added layers has a negative impact on the timeliness of the investigation reports. However, the fundamental structure and operation of the Department of Defense is based on adherence to the "chain of command" and must be followed. ADA cases are no different from any other serious matter requiring review from the level at which they arise to the level to which they must go in the chain of command. Each level in the chain is responsible for a lower level and accountable to all higher levels. It would be singularly inappropriate and counterproductive for the USD(C) to direct that investigation reports bypass chain of command. It would be more appropriate and productive for the USD(C) to recommend that the Military Departments use the results of this report to review and revise their investigation reporting process to ensure compliance with the Volume 14 timeframes.

RECOMMENDATION A.2: The IG, DoD recommended that the Office of the Under Secretary of Defense (General Counsel) establish policies to prioritize workload so that ADA cases are reviewed and completed more expediently. The policy should include at a minimum, target deadlines for completing legal reviews of ADA cases.

Redirected

USD(C) RESPONSE: Concur. This recommendation should have been addressed to the Office of the Deputy General Counsel (Fiscal) (ODGC(F)). There is no Office of the Under Secretary of Defense (General Counsel). The substance of this recommendation was implemented by the ODGC(F). The ODGC(F) established a goal of completing cases in, at most, one month, to ensure that cases are reviewed and completed expediently. Their basic objective is to clear cases within one week after transmittal for review. Recent experience shows this is being adhered to.

RECOMMENDATION B.1: The IG, DoD recommended that the Under Secretary of Defense (Comptroller)/Chief Financial Officer revise the DoD Financial Management Regulation, Volume 14, "Administrative Control of Appropriations and Antideficiency Act Violation to:

- A. Require that disciplinary officers acknowledge, in writing, that ADA violations are a misuse of DoD funds even though the misuse may not have been knowing or willful and despite whether the disciplinary officer considers the misuse of funds harmful to the Navy.

Attachment

USD(C) RESPONSE: Concur. This recommendation, if implemented, would apply to all disciplinary officers, not just those in the Navy.

B. Require that the Military Department Offices of Financial Management and Comptroller verify the independence of disciplinary officers before disciplinary officers are chosen to review cases and administer discipline.

USD(C) RESPONSE: Concur. We will update Volume 14, Chapter 9 to clearly state that personnel implicated in an ADA violation are ineligible to administer discipline. We will also indicate that the function of an investigating officer is to determine the facts upon which appropriate decisions concerning administrative and disciplinary actions can be made. Administration of discipline is a command or supervisory function and responsibility inherent in the office or position held by those commanding or supervising those responsible for ADA violations. Accordingly, we will instruct the Military Department Offices of Financial Management and Comptroller to notify their commands to appoint disciplinary officers whose individual independence is not impaired relative to the ADA violation assigned.

C. Require that Military Department Offices of Assistant Secretary for Financial Management and Comptroller refuse to accept disciplinary officer's conclusions that investigative officers' findings are invalid, and direct that such cases be elevated to higher or alternative chains of command until resolved.

USD(C) RESPONSE: Nonconcur. The investigating officer's role is to gather the facts and the disciplinary officer's responsibility is to make a conclusion based on the facts. The determination of whether or not there is a violation of the ADA or whether or not it was knowing or willful is ultimately one for commanders and supervisors, with the assistance of counsel, to determine. The recommendation should reflect the fact that the disciplinary officer should only discount the investigative officer's findings based on other supporting and verifiable facts which should be reported to the Military Department Offices of Assistant Secretary for Financial Management and Comptroller. Furthermore, "no violation" cases are reviewed by this Office and the ODGC(F) for a determination of whether the "no violation" finding is correct. If the "no violation" finding is incorrect the case is returned to the originating military department for reporting as an ADA violation and other appropriate action, including taking appropriate disciplinary actions. As for disciplinary actions, compliance with the recommendation would raise the appearance of improper command influence and, would, therefore, be subject to question and potential criticism. Depending upon the circumstances, compliance in some cases might even be a prohibited personnel practice.

Revised

RECOMMENDATION B.2: The IG, DoD recommended that the Under Secretary of Defense (Comptroller/CFO) revise DoD Directive 7200.1, "Administrative Control of Appropriations," November 21, 2003, paragraph 4.5, to clarify that admonishments and reprimands should be written as provided in the DoDFMR and intended by examples in the Antideficiency Act clauses.

USD(C) RESPONSE: Nonconcur. It would be more appropriate and productive for the USD(C) to recommend that the Military Departments use the results of this report to review and reconsider their processes for administering discipline for ADA violations. The examples given

Attachment

in the DoD Directive and the ADA's disciplinary statutes are illustrative; they are not exclusive. Both written and oral admonishments and reprimands fall within the purview of appropriate disciplinary measures. Oral admonishments and reprimands are proper under the Uniform Code of Military Justice, with respect to military personnel, and under the so-called "Douglas Factors," with respect to administrative and disciplinary actions against civilian personnel. To require a punishment to be written would be to deprive a commander or supervisor of their command and supervisory responsibilities and authorities. Therefore, implementation of this recommendation would result in improper command influence and, would, therefore, be legally objectionable.

Attachment

Department of the Army Comments



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY
FINANCIAL MANAGEMENT AND COMPTROLLER
108 ARMY PENTAGON
WASHINGTON DC 20310-0109

15 JUL 2004

MEMORANDUM FOR PROGRAM DIRECTOR, DEFENSE FINANCIAL AUDIT SERVICE, DODIG,
400 ARMY NAVY DRIVE, ARLINGTON, VIRGINIA, 22202-4704

SUBJECT: Draft Report on Department of Defense (DoD) Antideficiency Act (ADA) Reporting and
Disciplinary Process (Project No. D2004FJ-0003)

Reference subject draft, May 17, 2004.

Concur with Recommendation A.4. The DoDIG recommends the Assistant Secretary of the Army (Financial Management and Comptroller) establish procedures to ensure the timely review and processing of ADA cases. Specifically, establish deadlines for submitting cases to the Defense Comptroller, and justify delays in submission of cases.

The Army acknowledges that ADA cases were not given adequate attention during the period of this audit, FYs 2002 and 2003, due to the fall-out of 9/11 and other contingency operations where Army missions and funding more than doubled. Active measures to implement improvements have already been taken. They are:

- a. Established ADA status as a metric in the Army-wide Joint Reconciliation Program. Commands not able to meet assigned processing deadlines must provide a detailed explanation with specific timelines for corrective action.
- b. Obtained primary ADA points of contacts at each major command to ensure proper oversight of on-going cases.
- c. Establish deadlines for all delinquent cases and report monthly status to OSD(C).
- d. Schedules monthly meetings with specific major commands to discuss outstanding issues and address barriers preventing closure of delinquent cases.
- e. Actively partners with the Army General Counsel (OGC) to reduce processing time at Headquarters level. The OGC consistently reviews cases within one week of receipt; provides prompt legal advice; and fully participates in major command meetings and teleconferences.

Since January 2004, these combined efforts have resulted in Army submitting over 15 cases to OSD(C) (more than twice the combined total in FYs 2002 and 2003). It is expected Army ADA cases, over one year old as of October 1, 2003, will be submitted to OSD(C) by September 30, 2004. All other active cases are being closely monitored and expeditiously processed.

My point of contact is Claire Nelson, (703) 693-3383, email: Claire.Nelson@hqda.army.mil.

Robert M. Gregory
Acting Assistant Secretary of the Army
(Financial Management and Comptroller)

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Department of the Navy Comments



THE ASSISTANT SECRETARY THE NAVY
(FINANCIAL MANAGEMENT AND COMPTROLLER)
1000 NAVY PENTAGON
WASHINGTON, DC 20350-1000

JUL 23 2004

MEMORANDUM FOR DEPARTMENT OF DEFENSE DEPUTY INSPECTOR GENERAL FOR AUDITING

Subj: DODIG DRAFT AUDIT REPORT: REPORT ON DOD ANTIDEFICIENCY ACT
REPORTING AND DISCIPLINARY PROCESS (PROJECT NO. D2004FJ-0003)

Ref: (a) Draft DODIG Report D2004FJ-0003 of 17 May 04

Encl: (1) Department of the Navy Response

The Department of the Navy response to reference (a) is provided at enclosure (1). We do not concur with recommendations A.1. and A.3.

Other comments related to the draft audit follow:

- Regarding timeliness of reporting, DODIG's calculations concerning processing time count time spent in OSD's review process against the Military Departments. While the draft report later comments on these delays, representing them as part of the Military Department case process does not accurately portray the source of delay. The report states that {sic} "Specifically, the Navy's 43.1 months to complete ADA violation cases was the quickest of the three Military Departments," The 43.1 months includes preliminary ADA reviews. However, the 1-year standard specified in the DoD Financial Management Regulation only applies to formal ADA investigations, not preliminary ADA reviews. There is no requirement for organizations to report preliminary reviews until they are completed. Thus, we are unable to verify the 12.3-month average processing time for preliminary reviews contained in the draft report. Additionally, the Department of the Navy's actual in-house processing time for formal investigations averaged only 20.1 months vice the 21.6 months stated in the report. Between FY 2002 and FY 2003 the Navy reduced the average processing time by 28 percent. Below is a table of the 31 ADA cases that were forwarded to the OUSD(C) in FY 2002 and FY 2003, and the number of months it took to process:

| FY 2002 ADA Workload | | FY 2003 ADA Workload | |
|----------------------|--------------------------|----------------------|--------------------------|
| Cases # (19 total) | Processing Time (Months) | Cases # (12 total) | Processing Time (Months) |
| 98-01 | 29 | 01-01 | 31 |
| 98-02 | 33 | 01-02 | 32 |
| 98-04 | 29 | 02-01 | 17 |
| 99-06 | 29 | 02-02 | 21 |

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| FY 2002 ADA Workload | | FY 2003 ADA Workload | |
|----------------------|------|----------------------|------|
| 99-09A | 27 | 02-04 | 11 |
| 99-09B | 22 | 02-05 | 13 |
| 99-09C | 27 | 02-08 | 9 |
| 99-09D | 27 | 02-09 | 14 |
| 99-09E | 22 | 02-10 | 11 |
| 00-02 | 31 | 02-11 | 14 |
| 00-03 | 25 | 02-15 | 13 |
| 00-04 | 21 | 02-16 | 8 |
| 00-06 | 23 | | |
| 00-07 | 18 | | |
| 01-04 | 19 | | |
| 01-05 | 16 | | |
| 01-07 | 13 | | |
| 01-08 | 16 | | |
| 02-14 | 2 | | |
| Average | 22.6 | Average | 16.2 |

- Regarding the disciplinary process, DODIG states that "Without an increase in the Navy's perception of the seriousness of Antideficiency Act violations, there is increased risk that personnel will misuse fund without threat of punishment; and the comparatively high number of ADA violations in the Navy could continue." The Department of the Navy considers these violations a serious matter. In fact, in three cases (99-08, 00-05, and 02-14) covered by this report, Navy found an ADA violation and imposed discipline but was overturned by DoD General Counsel. The report does not capture this fact.

Further, the Department of the Navy has no authority to discipline retired civil servants, as the disciplinary authorities provided in Chapter 75, Title 5, United States Code, apply only to current employees. In contrast, military members are subject to recall to active duty for purposes of prosecution under the Uniform Code of Military Justice (UCMJ). Article 134 of the UCMJ authorizes prosecutions for offenses prohibited by the U.S. Code, and, if read broadly, could be interpreted as authorizing the recall of a member for prosecution for violating the ADA. However, there are no reported prosecutions under the ADA during the Act's long history, nor has any court considered Article 134 as a vehicle to press charges under ADA.

It must be recognized that the agency is bound by the decision of its supervisors and managers with respect to the proper level of discipline for specific acts or offenses. This is recognized in case law. Decisions of the courts and responsible regulatory agencies have recognized a number of factors that are relevant for consideration in determining the appropriateness of a penalty. These are generally known as the "Douglas factors", and derive their name from the decision of the Merit Systems Protection Board in Douglas v. Veteran Administration, 5 M.S.P.B 331 (1981). Without purporting to be exhaustive, those generally recognized as relevant include the following:

Subj: DODIG DRAFT AUDIT REPORT: REPORT ON DOD ANTIDEFICIENCY ACT
REPORTING AND DISCIPLINARY PROCESS (PROJECT NO. D2004FJ-0003)

- (1) The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional, technical, inadvertent, committed maliciously or for gain, or was frequently repeated;
- (2) The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
- (3) The employee's past disciplinary record;
- (4) The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
- (5) The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisor's confidence in the employee's ability to perform assigned duties;
- (6) Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
- (7) Consistency of the penalty with any applicable agency table of penalties;
- (8) The notoriety of the offense or its impact upon the reputation of the agency;
- (9) The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
- (10) Potential for the employee's rehabilitation;
- (11) Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
- (12) The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

The Department of the Navy's use of the term "technical violation" relates to the first Douglas factor cited above. In other words, managers, when determining the appropriate penalty to impose in ADA violation cases, are required by law and precedent to consider whether a violation of the ADA is technical in nature and weigh its harm to the agency.

Accordingly, the subject report should be modified to ensure consideration of the foregoing issues.


DIONEL M. AVILES

Department of the Navy
Response to DODIG Draft Audit Report (Project No. D2004FJ-0003)
DoD Antideficiency Act Reporting and Disciplinary Process
Dated May 17, 2004

Recommendation A.1. We recommend that the Under Secretary of Defense (Comptroller)/Chief Financial Officer revise the DoD Financial Management Regulation, Volume 14, "Administrative Control of Appropriations and Antideficiency Act Violation," October 2002, to require that the Military Departments submit preliminary review and formal investigation reports to the Office of the Assistant Secretary (Financial Management and Comptroller) at the time they are completed instead of waiting for the reports to filter through the command chain.

Department of the Navy Response: Non-Concur. Preliminary ADA's are performed by the activity where the potential violation occurred. By submitting the report through the chain of command, the quality of the report and data provided is greatly improved before it reaches the ASN(FM&C). The next echelon review ensures that sufficient data is provided to ensure the conclusions or findings are properly documented and supported. Submission of preliminary ADAs directly to the ASN(FM&C) would require formal return of the preliminaries to the respective activities for additional information when documentation was lacking or insufficient to determine if an ADA violation actually occurred. This would increase the processing time.

Recommendation A.3. We recommend that the Assistant Secretaries of the Navy and Air Force each issue a policy letter to lower level commands stressing the importance of starting and completing preliminary ADA reviews and formal investigations as soon as possible, and in accordance with the DoD Financial Management Regulation. In particular, the Navy needs to ensure that the assigned investigative officer is available to perform the investigation. The Air Force needs to ensure that its Major Commands assign an Investigating Officer in a reasonable amount of time.

Department of the Navy Response: Non-Concur. We have already issued policy letters to lower level commands stressing the importance of completing ADA investigations within the required timeframes. Improvement has been evidenced by the reduction in overdue cases from 16 in FY 2001; 5 in FY 2002; 6 in FY 2003; and currently 3 overdue through June 2004. Lastly, we were the only Department to complete any ADA cases (01-03, 02-08, 02-14, and 02-16) within the nine-month timeframe. Our management and process improvement efforts with respect to processing ADAs are showing positive performance measurement results.

Department of the Air Force Comments



Office of the Assistant Secretary

DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

7 JUL 2004

MEMORANDUM FOR ASSISTANT INSPECTOR GENERAL FOR AUDITING
OFFICE OF THE INSPECTOR GENERAL
DEPARTMENT OF DEFENSE

FROM: SAF/FM
1130 Air Force Pentagon
Washington DC 20330-1130

SUBJECT: DoDIG Draft Report, "DoD Antideficiency Act Reporting and Disciplinary Process," May 17, 2004 (Project No. D2004FJ-0003)

This is in reply to your memorandum requesting the Assistant Secretary of the Air Force (Financial Management and Comptroller) provide Air Force comments on the subject report.

Recommendation A.3, Concur. I have reissued my memorandum (attachment 2) to remind lower-level commands of the importance of completing formal investigations, and have further emphasized the need to assign investigating officers in a timely manner (Action Closed).

Recommendation A.5, Nonconcur - Proposed alternative action: I do not have authority to direct the Air Force Office of the Staff Judge Advocate or the Office of the General Counsel to reduce and endorse lower-level legal opinions or other legal services. However, the Office of the General Counsel has agreed to expedite their legal reviews and/or streamline the legal review process where it is appropriate, and I have worked, and will continue to work closely with the Office of the General Counsel to that end. We continue to make much progress. These actions are now closed.

Finally, I take exception to, and have commented further on some of the facts and statements included in the report pertaining to the Air Force.

Thank you for the opportunity to comment on this report. My complete comments are at Attachment 1. If you have any questions or require additional information, please contact Mr. Bill Town, SAF/FMPF, (703) 695-0827, DSN 225-0827, townp@pentagon.af.mil.

A handwritten signature in black ink, appearing to read "Michael Montelongo".

MICHAEL MONTELONGO
Assistant Secretary of the Air Force
(Financial Management and Comptroller)

Attachment:

1. Comments to DoDIG Draft Report
2. SAF/FM Memo

Financing the Fight

DODIG DRAFT REPORT – DATED MAY 17, 2004
PROJECT NO. D2004FJ-0003

“DoD Antideficiency Act Reporting and Disciplinary Process”

In order for the Air Force to process Antideficiency Act (ADA) violations in a more timely and effective manner, the DoDIG recommended the Assistant Secretary of the Air Force (Financial Management and Comptroller) take the following actions:

RECOMMENDATION A.3: Issue a policy letter to lower-level commands stressing the importance of starting and completing preliminary ADA reviews and formal investigations as soon as possible, and in accordance with the DoD Financial Management Regulation. In particular, the Air Force needs to ensure that its Major Commands assign an Investigating Officer in a reasonable amount of time.

AF RESPONSE: Concur.

Over 2 years ago I became concerned about the amount of time it was taking to complete formal investigations. As a result, I sent a memorandum (Subject: Timely Completion and Submission of Antideficiency Act Reports of Violation) to our lower-level commands stressing the importance of completing formal investigations on time. In addition, I included and will continue to include, a copy of this memorandum to every investigating officer who conducts a formal investigation. As a result of this recommendation I have revised my memorandum to also stress the importance of assigning an investigating officer within 15 business days after receipt of our direction to begin the investigation. (Action Closed July 2004)

Redirected

RECOMMENDATION A.5: Reduce lower-level legal opinions in ADA cases to no more than one, and allow the Secretary of the Air Force Office of General Counsel to endorse lower-level legal opinions.

AF RESPONSE: Nonconcur.

I do not have authority over the Air Force Office of the Staff Judge Advocate or the Office of the General Counsel, so I cannot direct them to reduce/endorse lower-level legal opinions. What I can do, and have done several times in the past, is to work more closely with the Office of the General Counsel to help expedite completion of legal reviews that, in my opinion, have taken too much time to be completed. I believe there has been much progress made in this area over the past few years to help reduce the overall time it takes to complete an investigation.

I realize that the performance of multiple legal reviews and opinions may seem excessive, but I do not agree that they add little or no value. On the contrary, eliminating a legal review could be detrimental to completing an accurate formal investigation, and have the effect of circumventing the “chain of command” and a commander’s prerogative for legal counsel. Having said that, the Office of the General Counsel has agreed to expedite their legal reviews and/or streamline the legal review process, providing these measures do not improperly circumvent the chain of command and/or diminish the quality of the reviews.

OTHER COMMENTS:

The report states that the Air Force's 8 ADA investigations reviewed and closed during FY 2002 and 2003 took an average of 49 months to investigate and report. This is simply not true. While the time taken was excessive to the requirements, those formal investigations took 30 months on average to complete including the preliminary review time.

Concerning preliminary review time, it appears the DoDIG auditors may have mistakenly assumed the 12-month time period for completing an ADA investigation includes the preliminary review time. In fact, preliminary reviews are separate from the formal ADA investigation times. As stated in the FMR, preliminary reviews are designed to review the circumstances surrounding a potential violation and are performed, "...*usually* within 90 days (emphasis added)." As a result, neither OUSD(C) nor we considered the 90 days a requirement, and we do not include it in the 12-month requirement to complete an ADA investigation. In addition, a thorough preliminary ADA review can and does result in the need for fewer formal investigations. For example, the Air Force conducted twice as many preliminary reviews during the same review period, which did not result in the need for formal investigations. Many of these preliminary reviews took far less than 90 days. Had these statistics been included in the report, our average time would have been less than one-third of that reported.

The report states the Air Force took 10 months to begin a formal investigation. After review of our records, to my knowledge, the Air Force has never taken 10 months to start a formal investigation.

Finally, I was never out-briefed or afforded the opportunity to review the auditor's conclusions. In the future, I would appreciate such consideration, since it would resolve many of these issues and result in a more accurate report.



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

7 JUL 2004

Office of the Assistant Secretary

MEMORANDUM FOR ALMAJCOM-FOA-DRU/CC

SUBJECT: Department of Defense, Inspector General (DoDIG) Draft Report, "DoD Antideficiency Act Reporting and Disciplinary Process," 17 May 2004 (Project No. D2004FJ-0003)

REFERENCE: My 2 May 2002 Memo, "Timely Completion and Submission of Antideficiency Act Reports of Violation"

The subject report criticized the Air Force for taking too long to complete our formal Antideficiency Act (ADA) investigations (Atch 1). In addition, the report also stated that Major Commands (MAJCOMs) are not assigning an investigating officer in a reasonable amount of time. As a result, the report recommended I issue a policy letter to lower-level commands stressing the importance of (1) starting and completing preliminary ADA reviews and formal investigations as soon as possible, and (2) ensuring that MAJCOMs assign an investigating officer in a reasonable amount of time. Although I addressed the timeliness issue of completing formal investigations in the referenced memo, I did not address the latter. Therefore, the following information is provided:

- a. In accordance with Department of Defense 7000.14-R, Financial Management Regulation (FMR), Volume 14, Chapter 5, paragraph D, August 1995, formal investigations of potential violations of the ADA, including the submission of the final summary report to the Office of the Under Secretary of Defense (Comptroller) (OUSD(C)), shall be completed within nine months, regardless of the scope of the event or amount of the potential violation. Although this process has changed somewhat, due to a recent OUSD(C) policy, which now requires the Report of Violation to be forwarded to my Deputy Assistant Secretary, Financial Operations (SAF/FMP), before disciplinary actions have been administered (so the DoD General Counsel can review the report and confirm that a violation actually occurred before a responsible individual is disciplined), the point is we still have only nine months, cumulative time, to complete the formal investigation.
- b. In addition, Chapter 5, paragraph D.1, of the FMR, states that the applicable Major Command "shall assign an investigating officer within 15 business days of the receipt of the request." Specifically, as soon as SAF/FMP signs the memo directing MAJCOMs to begin the formal investigation, commanders have 15 business days to identify and appoint an investigating officer. I realize that this may create a hardship, especially, for those MAJCOMs that have a large number of formal investigations on-going at any one time; but, until otherwise directed, this is still a requirement.
- c. Although the DoDIG report also criticized the Air Force for taking too long to complete preliminary ADA reviews, they mistakenly included the amount of time to complete the preliminary ADA review as part of the formal ADA investigation process. As a result, in my comments to the report, I reminded the DoDIG that (1) the preliminary ADA review is separate from the formal investigation, (2) the FMR does not require the preliminary ADA review to be completed in 90 days; rather, it states the review should be completed "in a timely manner,

Financing the Fight

usually within 90 days," and (3) the OUSD(C) has never monitored the Air Force in this area and, as a result, I have always been somewhat flexible on allowing the necessary time to complete a thorough preliminary ADA review. Afterall, a thorough preliminary ADA review can (and should) reduce the amount of time necessary to complete the formal investigation (if necessary). Nevertheless, I urge all commanders to be prudent when performing preliminary ADA reviews and to complete these reviews as soon as possible.

Finally, the OUSD(C) has been very concerned about another, related ADA issue – discipline! In fact, the main reason the OUSD(C) requested the subject audit was because he was concerned about the reluctance of some commanders to administer any disciplinary actions toward those individuals identified as responsible for the ADA violations. Although the DoDIG did not criticize and/or make any recommendations to the Air Force in the subject report, I want to emphasize that an ADA violation is a serious matter and we have an obligation to hold violators accountable. More importantly, being strict with those who break the law may also send the message to others that violating the ADA will not be tolerated and this, hopefully, will discourage violations in the future.

I am proud of what we have accomplished together, thus far, and I am confident that we can continue to work together to reduce the total cycle time to process formal Antideficiency Act investigations, to assign investigating officers within the required 15 business days, and to administer the appropriate disciplinary actions toward those individuals who are identified as responsible for ADA violations.

This memorandum supersedes the referenced memo effective immediately. If you have any questions, please contact my ADA action officer, Mr. Bill Town, (703) 695-0827, DSN 225-0827, or townp@pentagon.af.mil. I appreciate your assistance.

Finishing the fight!
Michael Montelongo
MICHAEL MONTELONGO
Assistant Secretary of the Air Force
(Financial Management and Comptroller)

Attachment:
DoDIG Draft Report, 17 May 04

cc: ALMAJCOM-FOA-DRU/FM
OUSD(C)

Team Members

The Office of the Deputy Inspector General for Auditing of the Department of Defense, Defense Financial Auditing Service, prepared this report. Personnel of the Office of the Inspector General of the Department of Defense who contributed to the report are listed below.

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